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ORDINANCE NO. O-7-03 Amendment #2 Amended

**Introduced by Mayor Moyer
Aldерwoman Hoyle
Aldерwoman Carter
Alderman Fox
Alderman Cohen**

AN ORDINANCE concerning

Affordable Housing

FOR the purpose of increasing affordable housing opportunities for sale or for rent for Annapolis residents of low and moderate income by creating an inclusionary housing requirement for new developments in the City of Annapolis, providing for expedited review and processing of all Residential Planned Development, containing MPDUs, and all matters relating to an inclusionary housing requirement.

* * * * *

BY by adding new
Title 20
Chapter 20.30
Code of the City of Annapolis
(1996 Edition and Supplement)

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall read as follows:

Chapter 20.30

Moderately Priced Dwelling Units

Sections:

20.30.010 Purpose and intent.
20.30.020 Definitions.
20.30.030 Applicability.
20.30.040 Application and inclusionary zoning plan.
20.30.050 Compliance.
20.30.060 Contribution in lieu of developing MPDUs.

- 20.30.070 Homeownership Assistance Trust Fund.
- 20.30.080 Adjustments for MPDU qualification.
- 20.30.090 Constructions of MPDUs.
- 20.30.100 Certificate of Eligibility.
- 20.30.110 Establishment of initial sales price of MPDUs.
- 20.30.120 Payment of homeowner associations fees.
- 20.30.130 Procedures for sale and rental of MPDUs.
- 20.30.140 Restrictions on resale and rent.
- 20.30.150 Restriction on use of Homeownership Assistance Trust Fund
- 20.30.160 Density bonus.

Sec. 20.30.010 Purpose and intent.

The purpose of this chapter is to implement the housing goals of the City of Annapolis by:

A. Requiring that developers of new residential developments provide moderately priced dwelling units (MPDUs) as a part of the development's approval and by providing an expedited review and approval process for any Planned Residential Development containing MPDUs in conformance with Section 20.30.050.

B. Ensuring that housing options continue to be available to low and moderate income residents, ~~and for special needs populations, including, but not limited to, the elderly.~~

C. Retaining opportunities for people that work in the city to live in the city.

D. Amending the development regulations to include requirements for moderately priced dwelling units.

E. Ensuring that private developers constructing MPDU's under this chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by providing density bonuses and incentives.

F. Encouraging the redevelopment and improvement of existing buildings by using these structures for moderately priced housing.

Sec. 20.30.020 Definitions.

In general, in this chapter, unless another meaning is plainly intended, the following words have the meanings indicated.

A. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, who either submits for

subdivision approval *for a residential “for sale” project* under Chapter 20 or is developing rental property, and which plan provides for the development of a total of ten (10) or more dwelling units in one or more stages of development regardless of whether any land has been transferred to another party.

B. “At one location” means all adjacent land of the applicant if:

1. The property lines are contiguous or nearly contiguous at any point;
2. The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right of way at any point; or
3. The property lines are separated only by other land of the applicant which is not subject to this chapter at the time of any permit, site plan, development, or subdivision application by the applicant.

C. “Certificate of eligibility” means a certificate issued by the Department of Planning and Zoning and signed by the person seeking to own or rent an MPDU and the planning and zoning director that certifies that the person is qualified to buy or rent an MPDU.

D. “Consumer Price Index” means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Baltimore metropolitan area.

E. “Date of original rental” means the date of the first lease agreement for a MPDU.

F. “Date of original sale” means the date of settlement for purchase of a MPDU.

G. “Eligible person” means a person or household:

1. Whose income is 80% or less than the family median income for the Baltimore Metropolitan Statistical Area (MSA), with adjustments for household size, as reported by the United States Department of Housing and Urban Development (HUD); and
2. Who holds a valid certificate of eligibility that entitles the person or household to buy or rent an MPDU; and
3. Who does not currently own a home; and
4. Is a City resident, or in the employ of the City of Annapolis beyond their probationary period, or ~~teaches in a pre-school~~ **is a full time teacher in an** elementary, middle or high school within the city limits.

H. "Expedited Review Process" means an application for a Planned Residential Development containing MPDUs in conformance with Section 20.30.050 shall be processed as a priority review project consistent with Section 20.30.010. Prior to the submittal of a Preliminary or Final Plan, the applicant and the Director of Planning and Zoning shall agree to a proposed schedule for both the applicant's submittals of Plans and the Department of Planning and Zoning's reviews of those submittals. The schedule shall establish reasonable timelines for all parties and all parties will endeavor in good faith to meet the timelines.

I. "Homeownership Assistance Trust Fund" means a fund established under Chapter 20.30 in order to achieve the purposes of 20.30.070 to be administered by the Department of Planning and Zoning.

J. HUD's "Fair Market Rents" (FMRs) shall mean the FMRs for the Baltimore MSA as published from time to time by HUD.

K. "Moderately Priced Dwelling Unit," or "MPDU," means a dwelling unit which:

1. Is offered for sale or rent to eligible persons or to the Department of Planning and Zoning and sold or rented under this chapter;

2. Is offered for a maximum sales price to be determined by the Department of Planning and Zoning under Section 20.30.110 of this chapter,

3. *Is offered for a monthly rental price of:*

a. *100% of HUD's fair market rents if the landlord pays all utilities (heat, water, sewer, electric, and trash); or*

b. *80% of Baltimore MSA, HUD fair market rents if the landlord does not pay all utilities (heat, water, sewer, electric, and trash).*

~~a. 100% of HUD's fair market rents if the landlord pays all utilities (heat, water, sewer, electric, and trash); or~~

~~b. 80% of HUD's fair market rents if the landlord does not pay all utilities (heat, water, sewer, electric, and trash).~~

~~4.3. Is offered for a monthly rental price of:~~

~~a. 100% of HUD's fair market rents if the landlord pays all utilities (heat, water, sewer, electric, and trash); or~~

~~_____ b. 80% of HUD's fair market rents if the landlord does not pay all utilities (heat, water, sewer, electric, and trash).~~

4. And, the monthly rental price of which shall be recalculated each year by the department of planning and zoning based on HUD's recalculation of fair market rents.

L. "Occupancy period" means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits. The occupancy period is ten (10) years for sale units and twenty (20) years for rental units, and begins on the date of initial sale or rental. If a sale or rental MPDU is sold to an eligible person within ten (10) years after its initial sale or rental, the unit must be treated as a new MPDU and a new control occupancy period must begin on the date of the sale or rental.

M. "Residential Development" includes:

1. all proposed subdivisions, rental property, condominiums, cooperatives, and new mixed use developments with a residential component:

2. a development that is a rehabilitation of an existing multiple family residential structure that increases the number of residential units from the number of units in the existing structure by four or more dwelling units;

3. part of the conversion of a rental property to a condominium or cooperative; and

4. a development that will change the use of an existing building from a nonresidential to a residential use.

Sec. 20.30.030 Applicability.

A. Compliance with the provisions of this chapter shall be required as a condition of approval for all residential development except that compliance with the provisions of this chapter shall not be required as a condition of approval for:

1. A planned development, or any residential development which requires special exception approval, for which special exception approval has been obtained on or before the effective date of Ordinance No. O-7-03; or

2. A residential development not requiring special exception approval and for which record plat approval has been obtained on or before the effective date of Ordinance O-7-03.

1 B. An applicant may not avoid this chapter by submitting phasing of new
2 development in increments below the thresholds established in Section 20.030.02 A., the
3 first being after the effective date of this chapter.
4

5 C. An applicant may submit a request for residential development below the
6 thresholds set forth in Section 20.030.02 A, but the applicant must agree in writing that
7 when unit thresholds are reached, the applicant will meet the requirements of this chapter.
8

9 **20.30.040 Application and inclusionary housing plan.**
10

11 A. If compliance with the provisions of this chapter is required under Section
12 20.30.030. A, a final subdivision plan may not be approved, a final subdivision plat may
13 not be signed, or a building permit be issued unless the requirements of this chapter are
14 met.
15

16 B. Before a covered development that will contain MPDUs may be approved by
17 the Director of Planning and Zoning, an applicant shall enter into an agreement with the city
18 that:
19

20 1. Requires a specific number of MPDUs to be constructed on a time schedule
21 approved by the director of planning and zoning;
22

23 2. Requires each single-family MPDU have two or more bedrooms;
24

25 3. Requires that the number of efficiency and one-bedroom MPDUs in a covered
26 development of multi-family dwelling units may not exceed the ratio that market-rate
27 efficiency and one-bedroom units respectively bear to the total number of market rate
28 dwelling units in the development;
29

30 4. details the number, the, location and sequencing plan for all of the MPDUs
31 in order to insure that:
32

33 a. the number of MPDUs which are either for sale or rent are built at the same
34 rate as the market eased dwelling units; and
35

36 b. the MPDUs are spread throughout the development and not clustered in one
37 or more areas;
38

39 5. requires that the MPDUs be architecturally compatible and similar in general
40 exterior appearance and scale with market rate dwelling units constructed in the
41 development;
42

43 6. allows the applicant to reduce the interior amenity level of the MPDUs,
44 provided:

- a. the units conform to applicable housing and building codes;
- b. the reduction to the interior amenity level does not include improvements related to energy efficiency, including mechanical equipment, plumbing, insulation, windows, heating and cooling systems;
7. requires compliance with the requirements of this title and the agreement for the occupancy period;
8. runs with the land for the occupancy period;
9. contains any other information the director of planning and zoning determines to be necessary to ensure the applicant's compliance with this title; and
10. is noted on the final subdivision plat and is recorded in the land records of the city.

Sec. 20.30.050 Compliance.

A. At least 12% of the units in a for sale residential development subject to this chapter shall be designated as MPDUs and meet all requirements of this chapter.

B. At least 6% of the units in a rental development subject to this chapter shall be designated as MPDUs and meet all the requirements of this chapter.

B. C. Compliance with this chapter may be achieved as follows:

1. Constructing MPDUs. Compliance may be achieved by constructing MPDUs on the site where the residential development is to occur ~~or off the site where the residential development is to occur if the planning commission Department of Planning and Zoning has approved the off-site location based on the location's access to public amenities and compatibility of surrounding uses and densities.~~

2. The applicant provides covenants, recorded among the land records of Anne Arundel County, that states that the unit will continue to be a MPDU for the control occupancy period, in compliance with this chapter; and

3. The applicant signs a promissory form, which includes a calculation of MPDUs required to comply with this chapter, in which the applicant agrees to meet the requirements of this chapter. This form shall be kept on file at the Department of Planning and Zoning.

Sec. 20.30.60 Contribution in lieu of developing MPDUs

1 A. In exceptional circumstances, the Director of Planning and Zoning may permit
2 an applicant to make a contribution to the Homeownership Assistance Trust Fund or donate
3 land in lieu of developing MPDUs.

4
5 B. An applicant shall:

6
7 1. Apply to the Director of Planning and Zoning for permission to make a
8 contribution authorized by subsection (A) of this section

9
10 2. Provide any information on or documents that the Department of Planning
11 and Zoning deems necessary in order to determine whether to grant permission; and

12
13 3. Prove to the satisfaction of the Director of Planning and Zoning that
14 exceptional circumstances exist.

15
16 C. For the purposes of this section, exceptional circumstance means:

17
18 1. In a proposed subdivision or development, an individual package of resident
19 services and facilities to be provided to all households would cost the occupants of the
20 MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible
21 households;

22
23 2. Because of topography or other physical features, or existing land use laws,
24 ordinances and regulations, the provision of the MPDUs required by this title would make
25 the development of the subdivision or development economically infeasible; or

26
27 D. In lieu of constructing MPDUs the City may ~~either~~

28
29 1. Accept a fee of ~~two~~ **four** percent of the total value of construction costs of the
30 dwelling units as evidenced by the dollar amount on the building permit application for a
31 residential development to be paid by an applicant to the Homeownership Assistance Trust
32 Fund; ~~and/or~~

33
34 2. Accept donations of land in fee simple, on or off-site, that the Department of
35 Planning and Zoning determines are suitable for the construction of MPDUs. The value of
36 donated land shall be equal to or be greater than the value of the fee in lieu payment
37 required by this chapter; **or the combination of the value of land and fee shall be equal to**
38 **or be greater than the value of the fee in lieu payment required by this chapter.**

39
40 3. In the event that an applicant cannot take advantage of the bonus density
41 provisions of this Chapter, such event shall be considered as an “exceptional circumstance”
42 entitling the applicant to satisfy the requirements of this Chapter by payment of a “fee in
43 lieu” of providing MPDU units.

44

1 E. The Department of Planning and Zoning may require, prior to accepting land
2 as satisfaction of the requirements of this chapter, that the applicant submit appraisals of
3 the land in question, as well as other data relevant to the determination of equivalent value.
4

5 F. The land shall be donated into the Homeownership Assistance Trust Fund.
6
7

8 **Sec. 20.30.070 Homeownership Assistance Trust Fund.**
9

10 A. The Homeownership Assistance Trust Fund shall be used to provide
11 homeownership opportunities to eligible persons or households under Section 20.30.020
12 G.
13

14 B. The fund shall be administered by the Department of Planning and Zoning
15 in accordance with this Chapter and funds shall only be available for use by ~~nonprofit~~
16 ~~developers and or~~ government agencies who may contract with nonprofit developers;
17

18 C. Any Homeownership Assistance Trust Fund monies received shall be placed
19 in a segregated account and shall be used to provide funds to ~~nonprofit developers or~~
20 governmental agencies to.
21

22 1. Purchase land and or buildings for other affordable housing that would be
23 provided to persons that meet the eligibility criteria for purchasing or renting MPDUs.;
24

25 2. Provide settlement expense, down payment and mortgage write down
26 assistance to eligible persons or households;
27

28 3. Construct for sale housing units;
29

30 4. Purchase and or rehabilitate rental housing for conversion to homeownership;
31

32 5 Rehabilitate residential units including owner occupied residential units;
33

34 6 Provide funds to match other state or federal homeownership programs;
35

36 7. Provide funds for administrative costs, or
37

38 8. Contract with nonprofit developers for development of housing units for sale
39 to eligible low or moderate income buyers.
40
41

42 **Sec. 20.30.080 Adjustments for MPDU qualification.**
43

If the Department of Planning and Zoning finds that conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Department of Planning and Zoning, may eliminate or modify those conditions or other costs that reduce the affordability of the MPDUs.

Sec. 20.30.090 Constructions of MPDUs.

A. Integration.

1. MPDUs within market rate developments shall be integrated with the overall development plan and shall be generally consistent in exterior design, scale and appearance with other units in the proposed development. The following criteria may be considered in determining whether the requirements of this paragraph have been met.

a. No existing or proposed physical barriers may be located between market rate units and MPDUs.

b. The MPDUs shall be located within reasonable proximity of proposed market-rate units.

c. The MPDUs of a particular housing type (e.g., multi-family or single-family) shall be reasonably blended with market rate units of the same type.

2. Consistent with the purpose and intent of this chapter, the Department of Planning and Zoning may authorize an applicant to increase the sale price of a MPDU by no more than 10%. However, no increase shall be allowed unless the Department of Planning and Zoning finds, in exceptional cases, that a price increase is necessary to achieve compliance with paragraph (1) above.

B. Phasing. Where feasible, MPDUs shall be provided coincident to the development of market-rate units, but in no event shall the development of MPDUs be delayed beyond the schedule below.

Percentage of Market Rate Units	Percentage of MPDUs
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
Up to 90%	100%

Sec. 20.30.100 Certificate of Eligibility.

1 A. The Department of Planning and Zoning shall grant a certificate of eligibility
2 to any person who meets the definition of eligible person.

3
4 B. An occupant of a rental MPDU shall submit annually verification of annual
5 household income and any other information that the Department of Planning
6 and Zoning may deem necessary to verify continued eligibility.

7
8 ~~B.~~C. The Department of Planning and Zoning shall annually monitor occupants of
9 rental MPDUs created pursuant to this chapter. Where the Department of Planning and
10 Zoning determines that an occupant no longer qualifies as an eligible person, the
11 Department of Planning and Zoning shall notify the person that subject to the terms and
12 conditions of the tenant's existing lease, the rental MPDU shall be vacated within six
13 months of notification in order to make the unit available to an eligible person.

14
15 **Sec. 20.30.110 Establishment of initial sales price of MPDU's**

16
17 The initial sales price of the MPDU's shall be set annually within 30 days of the
18 publication of the updated information for the SMSA. The sales price may not exceed the
19 affordability of a family of four based on 80% of the median income for the MSA, assuming
20 market rate interest with no more than 30% of the annual gross household income being
21 applied toward the cost of housing.

22
23 **Sec. 20.30.120 Payment of homeowner associations fees.**

24
25 Residents of an MPDU shall pay an equal share of homeowners' association fees
26 or similar costs as non-MPDU units.

27
28 **Sec. 20.30.130 Procedures for sale and rental of MPDUs.**

29
30 A. Procedures for Sale or Rental of MPDUs.

31
32 1. Every MPDU required under this chapter must be rented or sold to eligible
33 persons to be used for his or her own residence.

34
35 2. Before offering any MPDUs for sale or rent, the applicant must notify the
36 Department of Planning and Zoning of the proposed offering and the date on which the
37 applicant will be ready to begin marketing to eligible persons. The notice must include:

38
39 a. Whether the units will be sold or rented;

40
41 b. The number of units offered;

42
43 c. The number of bedrooms;

44

1 d. The floor area for each unit type;

2
3 e. A description of the amenities offered in each unit and a statement of the
4 availability of each unit for sale or rent;

5
6 f. A vicinity map of the offering; and

7
8 g. Other information or documents as the Department of Planning and Zoning
9 finds necessary to determine compliance with this chapter. This notice by the Department
10 of Planning and Zoning shall be issued within 30 days of the date from which the applicant
11 first submitted its notice to commence marketing.

12
13 3. The Department of Planning and Zoning will maintain a list of eligible persons
14 and must notify eligible persons by mail and by newspaper prior to the start of the marketing
15 period.

16
17 4. An applicant must not sell or rent any unit to a qualified person as defined in
18 this chapter until said person has obtained a certificate of eligibility issued by the
19 Department of Planning and Zoning from the buyer or lessee. A copy of each certificate
20 must be maintained on file by the Department of Planning and Zoning.

21
22 5. Ninety (90) days after the start of the marketing period, the Department of
23 Planning and Zoning may purchase an for sale MPDU if no eligible person has entered into
24 a purchase agreement or contracted to buy that MPDU. The Department of Planning and
25 Zoning shall only rent or sell the MPDU to an eligible person.

26
27 6. Every buyer or renter of an MPDU must occupy the unit as his or her primary
28 residence during the control period. Each buyer and renter must certify before taking
29 occupancy that he or she will occupy the unit as his or her primary residence during the
30 occupancy period. The Director of Planning and Zoning may require an owner who does
31 not occupy the unit as his or her primary residence to offer the unit for resale to an eligible
32 person under the resale provisions of Section 20.30.140. Every MPDU required under this
33 chapter must be offered to the general public for sale or rental to a good-faith purchaser or
34 renter to be used for his or her own primary residence, except units offered for sale or rent
35 to a non-profit corporation, whose purpose is to provide housing for persons of moderate
36 income.

37
38 7. An owner of an MPDU may not rent the unit unless the renter is an eligible
39 person, and the rental is approved in writing by the-Department of Planning and Zoning
40 annually.

41
42 8. Any rent obtained for a MPDU that is rented to an ineligible person must be
43 paid into the Homeownership Assistance Trust Fund by the owner within ninety (90) days
44 after the Department of Planning and Zoning notifies the owner of the rental violation. Any

amount unpaid after ninety (90) days is grounds for the Department of Planning and Zoning to assess a monthly fee that is equal to the HUD fair market rent for the MPDU.

Sec. 20.30.140 Restrictions on resale and rent.

A. Restrictions on Resale.

During the occupancy period, no MPDU shall be resold except as follows:

1. A person who rents a MPDU and lawfully occupies it when the unit is offered for sale may buy the dwelling unit, regardless of the person's income at the time of sale, if that person was an eligible person when they first rented the unit.

2. At the time of purchase of an MPDU the Department of Planning and Zoning shall determine the difference in value between the purchase price of the MPDU and the real market value of the MPDU.

3. At the time of resale of the MPDU the difference in value shall be paid to the City based on the following:

a. No monies shall be owed if the purchaser owns and occupies the Property for at least 10 years from the date of purchase of the property.

b. Upon the sale or transfer of all or any portion of the property within 10 years of purchase of the property, the unit shall remain an MPDU and the seller shall keep the net proceeds.

B. Restriction on Rent. During the ~~control~~ occupancy period, no MPDU shall be rented except as an MPDU herein defined.

Sec. 20.30.150 Restriction on use of Homeownership Assistance Trust Fund.

A. During the occupancy period, funds used from the Homeownership Assistance Trust Fund to purchase a home shall be repaid as follows:

1. Funds shall be repaid in full out of the net proceeds from the sale of the house if the net proceeds are greater than or equal to the sum of the original principal amount of the funds used. The term "net proceeds" means the proceeds from the sale of the Property less the unpaid principal balance of any superior and subordinate non-governmental or private loans.

2. A portion of the Homeownership Assistance Trust Fund funds used shall be forgiven if the net proceeds are less than the sum of the original principal amount of the funds used. The amount of the funds to be forgiven may not exceed the original amount provided. The portion of the funds to be forgiven shall equal the original principal amount of the funds multiplied by the number of years the purchaser owned and occupied the house multiplied by the applicable fraction based on the following chart:

Original Principal Amount of Homeownership Assistance Trust Fund Funding	Applicable Fraction
Less than \$15,000	1/5
\$15,000 to \$40,000	1/10
\$40,000	1/1

Sec. 20.30.160 Density Bonus.

A. An applicant who complies with this chapter shall be entitled to a density bonus for for-sale housing of 15% above the maximum amount permitted in a zone, provided that the development complies with all other provisions of Title 21.

B. An applicant who complies with this chapter shall be entitled to a density bonus for rental housing of 10% above the maximum amount permitted in a zone, provided that the development complies with all other provisions of Title 21.

C. In order to effectuate the purpose of this chapter stated in Section 20.30.010.E. and in order to ensure that the density bonuses established by subsections A and B above may be realized, the Director of the Department of Planning and Zoning shall allow a tolerance up to twenty percent of the requirements in Title 21 that are applicable to a development entitled to a density bonus which requirements may include, but are not limited to, lot size, yards, height, building bulk, parking and loading.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

ADOPTED this 14th day of June, 2004.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

Deborah Heinbuch, MMC
City Clerk

BY: ELLEN O. MOYER, MAYOR

EXPLANATION:

Redlining indicates matter added to existing law.

~~Strike Out indicates matter deleted from existing law.~~

Underlining indicates amendments.